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12/15/95

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TESCO ENTERPRISES, INC., Plaintiff,	:	
v.	:	Civil Action No. 2:90-cv-856 (AWT)
FIBREDYNE CORPORATION, ET AL., Defendants.	:	

RULING ON MOTION TO STRIKE JURY TRIAL CLAIM

Part I. Background

Plaintiff, Tesco Enterprises, Inc. ("Tesco"), brought two claims against defendants Fibredyne Corporation ("Fibredyne") and its president, Robert Matchett. Those claims arose out of the fact that Tesco is engaged in the design, assembly and sale of air filters and Fibredyne is engaged in the manufacture of filter elements and sold filter elements to Tesco, which Tesco used in assembling its air filters. Tesco's former customer, Invacare Respiratory Corporation formerly purchased air filters from Tesco and now purchases air filters from Fibredyne, leaving Tesco out of the loop. As a result of this development, Tesco brought claims against the defendants for fraudulent misrepresentation and violation of the Connecticut Unfair Trade Practices Act ("CUTPA"). The plaintiff demanded a jury trial as to all issues, and the defendants moved to strike the jury trial claim with respect to the CUTPA claim.

The defendants' Motion to Strike Jury Trial Claim [doc. #139] was GRANTED orally at a pretrial conference prior to jury selection. Because the court did not adopt the arguments of either party in granting the motion, as was explained at the

pretrial conference, this order sets forth the rationale for the court's ruling.

Part II. Discussion

It is well established that "the right to a jury trial in the federal courts is to be determined as a matter of federal law in diversity . . . actions." Simler v. Conner, 372 U.S. 221, 222 (1963). Thus, while a federal court in a diversity action must look to state law to determine applicable substantive law, "the characterization of that state-created claim as legal or equitable for purposes of whether a right to jury trial is indicated must be made by recourse to federal law." Id. at 223.

In light of this established Supreme Court precedent, it is clear that the recent Connecticut case of Associated Inv. Co. Ltd. Partnership v. Williams Assoc. IV, 230 Conn. 148 (1994), is not dispositive on the issue at hand. See 1 Robert M. Langer et al., The Connecticut Unfair Trade Practices Act 321 (1994) ("Despite the ruling in Associated Investment, a party may have a right to jury trial of a CUTPA claim asserted in federal court under the federal court's diversity or pendant jurisdiction."). This court cannot merely rely on the Connecticut Supreme Court's characterization of CUTPA as an equitable cause of action in analyzing the plaintiff's right to a jury determination of this claim. Instead, this court must follow the federal analysis as set forth in Granfinanciera, S.A. v. Nordberg, 492 U.S. 33 (1989):

> First, we compare the statutory action to 18th-century actions

> brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature . . . The second stage of this analysis is more important than the first.

Granfinanciera, 492 U.S. at 42 (quoting Tull v. United States, 481 U.S. 412, 417-418 (1987)).

The first factor that Granfinanciera requires this court to consider is the "nature" of the claim -- i.e. whether CUTPA or similar claims were brought as actions at law, or whether analogous actions were tried in courts of equity, prior to the merger of the courts of law and equity in 18th century England. If CUTPA or analogous claims were brought as actions at law, then a jury trial would be favored. "In contrast, those actions that are analogous to 18th-century cases tried in courts of equity . . . do not require a jury trial." Tull, 481 U.S. at 417. Thus, a brief analysis of CUTPA's legislative history is necessary in order to determine its intended purpose and in order to ascertain the existence and nature of any analogous causes of action.

CUTPA was modelled after § 5(a)(1) of the Federal Trade Commission Act ("FTCA"), 15 U.S.C. § 45(a)(1), which "authorizes the Federal Trade Commission to define, identify and prevent 'unfair methods of competition' and 'unfair or deceptive acts or practices' . . . to reach conduct beyond that proscribed at common law. " Associated, 230 Conn. at 156 (citations omitted). See Hinchliffe v. American Motors Corp., 184 Conn. 607, 617 (1981) ("In deciding what constitutes an unfair or deceptive act

or practice, courts of this state are encouraged to look to interpretations of the Federal Trade Commission Act"). This court must therefore look to the FTCA for guidance in determining whether CUTPA or similar claims were brought as actions at law, or whether analogous actions were tried in courts of equity, prior to the merger of the courts of law and equity in 18th century England.

In drafting the FTCA, Congress intentionally left the terms "unfair methods of competition" and "unfair or deceptive acts or practices" ambiguous and chose not to tie "the concept of unfairness to a common law or statutory standard or [to] enumerat[e] the particular practices to which it was intended to apply. . . " Federal Trade Commission v. Sperry & Hutchinson Co., 405 U.S. 233, 239-240 (1972). Congress' silence on these points reflects its dual beliefs that (i) the common law meaning of "unfair competition" was too narrow and that, therefore, (ii) the common law could not be used to remedy all conduct which constituted unfair or deceptive practices. Federal Trade Commission v. R.F. Keppel & Bro., Inc., 291 U.S. 304, 310-312 (1934). In fact, it was Congress' intention that ". . . the meaning and application . . . be arrived at by . . . the gradual process of judicial inclusion and exclusion." Id. at 312.

Using the legislative history of the FTCA as a guide, the Connecticut General Assembly "deliberately chose not to define the scope of unfair or deceptive acts proscribed by CUTPA so that courts might develop a body of law responsive to the marketplace

practices that actually generate such complaints." Associated, 230 Conn. at 157 (citing Sportsmen's Boating Corp. v. Hensley, 192 Conn. 747, 755 (1984)). As such, courts have held that recovery is permissible under CUTPA without proof of reliance or that the representation became party of the basis of the bargain, either of which must be proven to successfully assert a claim for unfair and deceptive practices under the common law. Hinchliffe, 184 Conn. at 617. "Predictably, [therefore,] CUTPA has come to embrace a much broader range of business conduct than does the common law tort action." Associated, 230 Conn. at 157 (quoting Sportsmen's Boating, 192 Conn. at 756).

Additionally, a claim based on CUTPA requires the court to consider public values, a function traditionally reserved for the courts of equity. See Associated, 230 Conn. at 158 ("[b]ecause CUTPA is a self-avowed 'remedial' measure . . . it is construed liberally in an effort to effectuate its public policy goals.") (quoting Sportsmen's Boating, 192 Conn. at 756); Sperry & Hutchinson, 405 U.S. at 244 (Federal Trade Commission acts like court of equity in applying the FTCA against unfair or deceptive acts or practices).

In light of the above analysis, this court finds that actions analogous to CUTPA -- such as CUTPA's federal counterpart, the FTCA -- would not have been brought in the English courts of law prior to the merger of the courts of law and equity. This first factor therefore weighs in favor of striking plaintiffs' jury claim.

The second factor which the Granfinanciera test requires this court to consider is whether the remedy sought is legal or equitable in nature.[1] The law is clear that the plaintiff asserting a CUTPA claim "has access to a remedy far more comprehensive than the simple damages recoverable under common law." Associated, 230 Conn. at 160 (quoting Hinchliffe, 184 Conn. at 617).

As far as compensatory damages are concerned, the Connecticut Supreme Court has held that the CUTPA plaintiff need only demonstrate an "ascertainable loss", and can thus recover even if the plaintiff cannot prove actual damages as required by the common law. Hinchliffe, 184 Conn. at 615-16. Additionally, CUTPA empowers the court, in its discretion, to award costs and reasonable attorneys' fees and to award "injunctive or other equitable relief" either in addition to, or in lieu of, monetary damages. See Conn. Gen. Stat. § 42-110g(d). In contrast, in federal practice, each party is traditionally required to bear its own attorneys' fees; therefore, attorneys' fees are not normally recoverable. See McGuire v. Russell Miller, Inc., 1 F.3d 1306, 1312 (2d Cir. 1993). Lastly, CUTPA grants the court

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[1] This court has not found any case which specifically addresses the issue of whether the relevant test is the nature of the remedies available under the statute, or whether the proper test is the nature of the specific remedies sought in the case at hand. While some courts which have analyzed the right to a jury trial under CUTPA have looked to the totality of the remedies available under the statute, other courts have addressed only the specific remedies sought. This court need not rule on the proper scope of the test, however, because the application of both versions of the test would point toward a judicial determination of the CUTPA claim in this case.

further discretion to award punitive damages and to "provide such equitable relief as it deems necessary or proper." See Conn. Gen. Stat. § 42-110g(a). In contrast, under Connecticut tort law any punitive damage award would be limited to the expenses of litigation. Gagne v. Town of Enfield, 734 F.2d 902, 904 (2d Cir. 1984). Accordingly, the remedies available under the statute are equitable in nature.

Moreover, while the plaintiff seeks monetary damages in this particular action, its prayer for relief also includes attorneys' fees, punitive damages, and any other relief which the court deems equitable and proper. Thus, the remedies sought in this action are also equitable in nature.

Part III. Conclusion

In light of the foregoing, defendants' Motion to Strike Jury Trial Claim [doc. #139] with respect to the CUTPA claim was GRANTED.

It is so ordered.

Dated at Hartford, Connecticut on this 15th day of December, 1995.

Alvin W. Thompson
United States District Judge